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MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
735 E. Michigan Ave.
Lansing, Michigan 48912

**AGREEMENT
FOR
DEVELOPMENT/UNIT INSPECTIONS**

THIS AGREEMENT FOR DEVELOPMENT/UNIT INSPECTIONS ("Agreement") is dated as of the 1st day of January, 200__ between MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY (the "Authority"), a public body corporate and politic of the State of Michigan, and _____, a _____ (the Contractor).:

THE MEANING OF CAPITALIZED TERMS CAN BE
DETERMINED BY REFERENCE TO SECTION 1.2.

RECITALS:

- (A) The Authority monitors developments financed or assisted by Programs, which include but are not limited to the following:
1. Project-Based Section 8 program (the "Section 8 Program");
 2. Section 236 program (the "Section 236 Program"); and
 3. Low Income Housing Tax-Credit program (the "Low Income Housing Tax-Credit Program" or "LIHTC");
 4. Rural Housing Service 515 program (the "Rural Housing Service 515 Program")
 5. 80/20 Tax-Exempt program (the "80/20 Program");
 6. 70/30 Tax-Exempt program (the "70/30 Program");
 7. Taxable Bond program (the "Taxable Bond Program");
 8. Neighborhood Preservation Program (the "Neighborhood Preservation Program");
 9. TEAM Lending Program (the "TEAM");
 10. HOME TEAM Advantage Program (the "HOME TEAM Program");
 11. HOME program, which includes the following programs but not HOME—Community Development (collectively, the "HOME Program(s)"):
 - i. HOME--Specials Needs;
 - ii. HOME—Multi-Family;
 - iii. HOME—Equity Enhancement;
 - iv. HOME—Rural Initiative;
 - v. HOME—NPP; and
 - vi. HOME; and

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12. Pass-Through program (the “Pass-Through Program”).

- (B) To meet the requirements of the Act, the Authority engages independent contractors to perform certain necessary services;
- (C) In accordance with the terms of Resolution and Staff Report to the Authority’s Board dated _____, **200** , the Authority wishes to enter into this agreement with the Contractor so that the Contractor will perform the Services described in Exhibit I, which is attached to and made a part of this Agreement.
- (D) The Contractor desires to offer his knowledge and expertise to perform the Services in accordance with the terms and conditions set forth in this Agreement.

Therefore, the Parties agree as follows:

ARTICLE I.

INCORPORATION OF RECITALS; DEFINITION; INTERPRETATION

Section 1.1 Incorporation of Recitals. The Recitals to the Agreement are, by this reference, incorporated into and deemed a part of this Agreement.

Section 1.2 Definitions. All capitalized terms used in this Agreement shall have the meanings given to those terms in this Section 1.2 or as elsewhere defined in this Agreement unless the context or use clearly indicates a different meaning.

Annual Inspection: the annual portion of the Physical Inspection performed by the Contractor in accordance with Exhibit I of this Agreement. The Annual Inspection on Authority-Financed Developments may be followed by a Re-Inspection 6 months after the Annual Inspection, if requested in writing by Authority staff.

Assistance: payments through a Program that enables a Development to subsidize rent for Households.

Authority-Approved Form(s): “Authority-Approved Form(s)” has the meaning given that term in Exhibit I of this Agreement.

Authority-Financed Development: a multi-family Development financed by an Authority mortgage loan.

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Bond-Financed Development(s): a multi-family Development that is financed by an Authority mortgage loan through a program that is funded through the sale of bonds and includes 80/20 Program, the 70/30 Program, the Taxable Bond Program, the HOME TEAM Program, and the TEAM Program.

CNA: “CNA” has the meaning given that term in Exhibit I of this Agreement. (See “INSPECTION OF UNITS/Overview.”) Only Authority-Financed Developments that have CNA reports are subject to a CNA Review.

CNA Review: “CNA Review” has the meaning given that term in Exhibit I of this Agreement. (See “INSPECTION OF UNITS/Overview.”) Only Authority-Financed Developments that have CNA Reports are subject to a CNA Review.

Development: a multi-family development or a home that receives assistance from or is financed through a Program.

HOME Program: “HOME Program(s)” has the meaning given to that term in Recital A(11).

HUD: U.S. Department of Housing and Urban Development.

Inspection: a review of the physical condition of a Development in accordance with the inspection standards and requirements for the Program that financed the Development as set forth in this Agreement.

Inspection Fee: “Inspection Fee” has the meaning given to that term in Section 4.2 of this Agreement.

IRS: U.S. Department of Treasury--Internal Revenue Service.

Key Personnel: the Contractor’s employees and/or agents who perform Services or a subcontractor’s employees and/or agents who perform the Services.

MSHDA Approved Form: “MSHDA Approved Form” has the meaning given to that term in Exhibit A under “MSHDA Inspection Standards.”

Owner: owner of a Unit that is leased by a Tenant in the Program.

Physical Inspection: a physical inspection of a Development in accordance with the terms and requirements of this Agreement and Exhibit I. A Physical Inspection may be an Annual Inspection or Re-Inspection of the Development.

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Physical Inspection Report: “Physical Inspection Report” has the meaning given to that term in Exhibit A under “Reports to Authority and Letters to Authority Development.”

Program: an Authority sponsored or administered program—including, but not limited to, the Section 8 Program, the Section 236 Program, the 80/20 Program, the 70/30 Program, the Taxable Bond Program, the Low Income Housing Tax-Credit Program, Rural Housing Service 515 Program, the Neighborhood Preservation Program, the TEAM Program, the HOME Program, the HOME TEAM Program, and the Pass-Through Program--through which a Development or Unit is financed or receives assistance.

Programs: collectively, Authority programs—including but not limited to the Section 8 Program, the Section 236 Program, the 80/20 Program, the 70/30 Program, the Taxable Bond Program, the Low Income Housing Tax-Credit Program, the Neighborhood Preservation Program, the TEAM Program, the HOME Program, the HOME TEAM Program, and the Pass-Through Program--through which Developments or Units are financed or receive assistance.

Register: the current register of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the 1980 Public Act 278, as amended, MCL 423.321, et seq. The United States National Labor Relations Board compiles this information.

Re-Inspection: a follow-up physical inspection performed by the Contractor after the Annual Inspection for the purpose of confirming the satisfactory completion of deficiencies noted during Annual Inspections. The Contractor may perform a Re-Inspection on Authority-Financed Developments six (6) months after the Annual Inspection, if requested in writing by Authority staff. The requirements for Re-Inspections are set forth in Exhibit I, attached to and made a part of this Agreement.

Re-Inspection Fee: “Re-Inspection Fee” has the meaning given to that term in Section 4.2 of this Agreement.

Regulations: rules and provisions set forth in the Code of Federal Regulations that apply to a Program.

Scope of Work: all of the tasks and work described in Exhibit I of this Agreement that the Contractor is obligated to perform pursuant to the terms of this Agreement. The Scope of Work shall include any tasks and work necessary to provide Services.

Services: the work necessary to perform the tasks and services and/or produce the Work Product as required under the Scope of Work and this Agreement for the benefit of the Authority and/or on the Authority’s behalf.

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State: the State of Michigan.

Tenant(s): a person who leases a Unit from an Owner.

Unit: an apartment within a Development; a house is a Development.

Work Product(s): any data compilations, reports, photos and any other media, materials, or other objects or works of authorship created or produced by the Contractor as a result of and in furtherance of performing the Services.

Section 1.3 Rules of Construction. The rules of construction set forth in this Section 1.3 shall apply to this Agreement:

1.3(1) The singular form of any word used in this Agreement, including the terms defined in Section 1.2, includes the plural, and vice versa, unless the context otherwise requires. The use in this Agreement of a pronoun of any gender includes correlative words of the other genders.

1.3(2) All references in this Agreement to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or other subdivisions of this Agreement; the words “in this Agreement,” “of this Agreement,” “under this Agreement” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision of this Agreement.

1.3(3) Any captions, headings or titles of the Articles and Sections of this Agreement, and any table of contents appended to this Agreement, are solely for convenience of reference, do not limit or otherwise affect the meaning, construction or effect of this Agreement or describe the scope or intent of any provision of this Agreement. This rule of construction shall not apply to Exhibits or Schedules to this Agreement.

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1.3(4) All accounting terms not otherwise defined in this Agreement have the meanings assigned to them in accordance with applicable generally accepted accounting principles as in effect from time to time.

1.3(5) Every “request,” “order,” “demand,” “direction,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent” or similar action under this Agreement by any party shall, unless the form to be used is specifically provided, be in writing and signed by a duly authorized representative of such party with a duly authorized signature. The parties acknowledge that the Contractor may use computer-generated signatures for correspondence addressed to owners and management agents and for reports to the Authority and that such signatures shall be deemed duly authorized by the Contractor.

1.3(6) All references in this Agreement to “counsel fees,” “attorneys fees” or the like shall mean and include fees and disbursements allocable to in-house or of outside counsel, whether or not suit is instituted, and include fees and disbursements preparatory to and during trial and appeal and in any bankruptcy or arbitration proceeding.

1.3(7) Whenever the term “includes” or “including” is used in this Agreement, such terms mean “includes or including by way of example and not limitation.”

Section 1.4 Interpretation. The parties to this Agreement acknowledge that each party and its counsel have participated in the drafting, review and revision of this Agreement. Accordingly, the parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment, modification, supplement or restatement of any of the foregoing or of any exhibit to this Agreement.

ARTICLE II.

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TERM OF AGREEMENT

Section 2.1 Initial Term. The term of this Agreement will commence as of January 1, 200_ and end on December 31, 200_. This Agreement may be terminated prior to December 31, 200_ in the manner described in Paragraph 2.2. In its discretion, the Authority may extend the Contract for one additional year.

Section 2.2 Termination. The Authority may terminate this Agreement immediately due, but not limited to, misconduct, malfeasance or material breach by the Contractor of the terms of this Agreement. The Authority may also terminate this Agreement upon the Contractor's failure to rectify deficiencies in meeting the standards for performance established by the Authority, pursuant to specific notification in writing to the Contractor of such deficiencies not less than 60 days prior to the effective date of such termination. The Authority will not, under any circumstance or situation, be subject to liability for any loss, damage, or expense resulting from the Authority's termination of this Agreement.

2.2.1 The Authority may terminate this Agreement if the IRS or HUD imposes new regulations that, in the sole opinion of the Authority, require substantially higher costs to the Authority. The Contractor may terminate this Agreement if the IRS or HUD imposes new regulations that, in the sole opinion of the Contractor, require, additional manpower or substantially higher costs to the Contractor. The party intending to terminate this Agreement under this subsection shall provide written notice to the other party of its intent to terminate this Agreement not less than 60 days prior to the effective date of such termination.

2.2.2 Either party may terminate this Agreement by giving 60 days prior written notice.

2.2.3 The Authority may terminate this Agreement if the Contractor, an officer of the Contractor, Key Person, or an individual with an ownership interest in the Contractor, or a subcontractor approved by the Authority is convicted of the following during the term of this Agreement:

- (1) a criminal offense incident to the application for or performance of an Authority agreement, public or private agreement or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for Authority of Michigan employees;
- (2) convicted under state or federal antitrust statutes; or

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- (3) convicted of any other criminal offense, which in the sole discretion of the Authority, reflects upon the Contractor's business integrity.

2.2.4 In the event either party terminates this Agreement, compensation will immediately cease as of the effective date of termination. The Contractor shall be compensated for fees earned prior to the date of termination in accordance with the terms of this Agreement.

Section 2.3 Return of Equipment and Documents. Upon request of the Authority or upon termination, the Contractor will promptly return all Work Products, software, records, files, documents, correspondence, manuals, policy bulletins, seminar materials, and all other documents, records and data, in written and electronic form, that are the property of the Authority. This Section 2.3 shall not be read, construed or interpreted to require the Authority to provide the Contractor with materials, supplies or equipment.

Section 2.4 Liquidated Damages: The parties acknowledge that the Authority will suffer damages if the Contractor fails to perform in accordance with the provisions of this Agreement or terminates this Agreement during the initial Term or any renewal Term without satisfying the notice provisions set forth in Section 2.2 above and the provisions for returning documents as set forth in Section 2.3 above, and that the amount of such damages will be difficult or impossible to calculate with reasonable certainty. Accordingly, if the Contractor fails to perform in accordance with the provisions of this Agreement or terminates this Agreement during the initial Term or any renewal Term without satisfying the notice provisions set forth in Section 2.2 above and the provisions for returning equipment and documents as set forth in Section 2.3 above, the Contractor shall pay to the Authority as liquidated damages, and not as a penalty, the sum of Six Thousand and no/100 Dollars (\$6,000.00). The Contractor shall pay the Authority the amount of liquidated damages due hereunder within 60 days after receipt of written demand for payment from the Authority.

ARTICLE III.

SERVICES

Section 3.1 Services by Contractor. The Services described in Exhibit I define and constitute the scope of the work for which the Contractor is responsible under this Agreement. The Contractor agrees to faithfully and promptly perform such services, in full compliance with the requirements of the Authority and of the Act and the Regulations.

Section 3.2 Procedures, Standards and Forms. The Contractor acknowledges that the procedures, standards and forms required for performing the Services are subject to change by the Authority. Changes in the procedures, standards and forms shall be deemed to be within

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the Scope of Work as long as the procedures, standards and forms do not materially increase the time necessary to perform the physical inspections.

Section 3.3 Authority and HUD Requirements. In performing its duties and responsibilities hereunder, the Agent will comply at all times with all applicable HUD and Authority Equal Opportunity rules, regulations, and requirements.

Section 3.4 Economy. The Contractor shall make a good faith effort to perform the Services in an economical manner. Such efforts shall include scheduling visits to Developments, preparing for visits, and organizing work so that all applicable and necessary Services are performed at the Development during the visit or revisit. The Authority shall make a good faith effort to provide accurate information to the Contractor in a timely manner.

ARTICLE IV.

COMPENSATION

Section 4.1 Fee for Inspections of Units. The Authority will pay the Contractor a fee for the Physical Inspection ("Inspection Fee") of each Unit and another fee for the Re-Inspection ("Re-Inspection Fee") of each Unit in accordance with Exhibit II, which is attached to and made a part of this Agreement, subject to the conditions in this Agreement.

Section 4.2 Sum of Fees Paid. It is expressly understood and agreed that in no event will the total amount to be paid by the Authority to the Contractor under this agreement exceed \$_____ for full and complete satisfactory performance.

Section 4.3 Billing Process for Physical Inspections. The Contractor will comply with the billing requirements for Physical Inspections described in Exhibit II of this Agreement. The Contractor acknowledges that as a condition of payment, bills must be submitted in the manner described in Exhibit II of this Agreement.

Section 4.4 Out-of-Pocket Expenses. The Authority shall not reimburse the Contractor for phone calls to the Authority, long distance phone charges, fax charges, copying charges or postage. The Authority shall only reimburse the Contractor for out-of-pocket expenses that:

- (a) Are submitted in the manner described in Section 4.3;
- (b) Are not ineligible for reimbursement under this Agreement; and
- (c) Are deemed by the Authority in its sole discretion to be reasonable and necessary for the delivery of the Services.

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ARTICLE V.

CONTRACTOR QUALIFICATIONS AND TRAINING

Section 5.1 Contractor Qualification. The Contractor confirms that the Contractor and its Key Persons possesses the knowledge and skills necessary to perform the Services.

Section 5.2 Knowledge of Programs. The Contractor and Authority acknowledge that the Contractor's and Key Person's qualifications at the time it enters into this Agreement need not include knowledge of the requirements of each Program unique to the Authority.

Section 5.3 Key Persons.

Section 5.3.1 Performance of Services. The Contractor acknowledges that only Key Persons shall perform the Services. Key Persons include the names of all employees and agents of the Contractor who have contact with Authority staff. (The term "contact" shall include, but not be limited to, "one-on-one" meetings and the exchange of letters, messages, or information via hand delivery, telephone, voice mail, U.S. mail, Electronic Mail, Facsimile, or Commercial Delivery Service.)

Section 5.3.2 Assignment of Key Persons. The Authority reserves the right to approve the Contractor's assignment of Key Persons to perform the Services and to recommend reassignment of personnel deemed unsatisfactory by the Authority. The Contractor agrees that the continuity of Key Persons is critical. The addition or removal of Key Persons without the written consent of the Authority may be considered by the Authority to be a material breach of this Agreement. The prohibition against removal or reassignment shall not apply where Key Persons must be replaced for reasons beyond the reasonable control of the Contractor, including, but not limited to, illness, disability, resignation or termination of a Key Person's employment as long as a Key Person is available to render Services for the Contractor.

Section 5.3.3 Certificate Verifying Key Persons. Prior to executing this Agreement, the Contractor shall provide to the Authority the names of all Key Persons by completing Exhibit III, which is the Certificate Verifying Key Persons of the Contractor ("Certificate"). In the event the Contractor fails to provide to the Authority the names of any Key Persons, the parties shall consider the signatory for the Contractor to be the sole Key Person for the Contractor. The Authority and Contractor will evidence changes to the Certificate by handwriting, initialing and dating changes to the Certificate.

Section 5.4 Maintenance of Legal Existence. At the execution and throughout the term of this Agreement, the Contractor shall operate as a limited liability corporation,

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corporation, or similar entity registered, in good standing, and authorized to do business in the State of Michigan and will provide valid documentation of same upon request.

Section 5.5 Contractor Orientation. During the term of this Agreement, the Contractor shall participate in orientations and workshops provided by the Authority to help the Contractor develop expertise and familiarity with the Authority's specific requirements and quality requirements, which may include:

- (a) the requirements of the Authority's specific policies and procedures for each Program, governing Regulations, and performance standards and expectations for Services, including but not limited to Inspections and Re-Inspections;
- (b) the respective responsibilities and duties of the Contractor and the Authority in connection with the Services;
- (c) forms that the Contractor will use when providing the Services; and
- (d) programs and assessments prepared by third parties, including Comprehensive Needs Assessment Training.

Section 5.6 Training and Certification. The Contractor shall ensure that Key Persons who perform Physical Inspections have received training on physical inspections from a program approved by HUD or the Authority. The Contractor shall provide recent certificates of training in Uniform Physical Conditions Standards (UPCS) for each Key Person who performs Physical Inspections, thereby certifying that the Key Person is adequately trained to perform Physical Inspections as described in this Agreement.

Section 5.7 Reimbursement by Authority. The Authority shall not reimburse the Contractor for the time, costs or expenses incurred in connection with workshops or seminars.

Section 5.8 Notice Of Changes In Policy and Procedure. The Authority will confirm in writing any applicable changes in the Program, specifically modifications to policies and procedures that are adopted during the term of the Agreement. The Contractor shall implement the modified policies and procedures within 30 days of the date of the notice or modification to policies and/or procedures. Authority staff shall be available to explain modified policies and procedures to the Contractor.

ARTICLE VI

INDEMNIFICATION AND INSURANCE

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Section 6.1(1) General Indemnification. The Contractor shall indemnify, defend and hold harmless the Authority, its Board, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

- (a) any claim, demand, action, citation or legal proceeding against the Authority, its employees and agents arising out of or resulting from (1) the Services provided or (2) performance of the Services, the duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Agreement.
- (b) any claim, demand, action, citation or legal proceeding against the Authority, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Agreement;
- (c) any claim, demand, action, citation or legal proceeding against the Authority, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
- (d) any claim, demand, action, citation or legal proceeding against the Authority, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the Authority;
- (e) any claim, demand, action, citation or legal proceeding against the Authority, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

Section 6.1(2) Patent/Copyright Infringement Indemnification. The Contractor shall indemnify, defend and hold harmless the Authority, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the Authority to the extent that such action or proceeding is based

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on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States.

Section 6.1(3). Indemnification Obligation Not Limited. In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in subclauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other subclause.

Section 6.1(4) Continuation of Indemnification Obligation. The duty to indemnify will continue in full force and affect notwithstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

Section 6.2(1) Purpose and Proof of Insurance. The Contractor shall purchase and maintain such insurance as will protect it and the Authority from claims which may arise out of or result from the Contractor's performance of the Services, whether performed by the Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

Section 6.2(2) Waiver of Subrogation. The Contractor waives all rights against the Authority, its Board, officers, employees and agents for recovery of damages to the extent these damages are covered by the insurance policies the Contractor is required to maintain pursuant to this Agreement. The Contractor also agrees to provide evidence that all applicable insurance policies contain a waiver of subrogation by the insurance company.

Section 6.2(3) Required Insurance Coverages. All insurance coverages provided relative to this Contract/Purchase Order are PRIMARY and NON-CONTRIBUTING to any comparable liability insurance (including self-insurances) carried by the Authority. The Insurance shall be written for not less than any minimum coverage herein specified or required by law, whichever is greater. All deductible amounts for any of the required policies are subject to approval by the Authority. The Authority reserves the right to reject insurance written by an insurer the Authority or State deems unacceptable.

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Section 6.2(4) Certificates of Insurance. Before both parties sign this Agreement, the Contractor must furnish to the Authority's Director of Legal Affairs or Finance Certificates of Insurance verifying insurance coverage. The Certificate must be on the standard "Accord" form. The Contract Number for this Agreement must be shown on the Certificate of Insurance to assure correct filing. All such Certificate(s) are to be prepared and submitted by the Insurance Provider and not by the Contractor. All such Certificate(s) shall contain a provision indicating that coverages afforded under the policies WILL NOT BE CANCELLED, MATERIALLY CHANGED, OR NOT RENEWED without THIRTY (30) days prior written notice having been given to Authority's Director of Legal Affairs. Such NOTICE must include the CONTRACT NUMBER affected and be mailed to: Director of Legal Affairs, MSHDA, 735 E. Michigan Avenue, P.O. Box 30044, Lansing, MI 48912.

Section 6.2(5) Types and Amount of Coverage. The Contractor is required to provide the type and amount of insurance set forth below:

- (a) Professional Liability Insurance (Errors and Omissions coverage) with the following minimum coverage:

\$1,000,000 each occurrence and \$1,000,000 annual aggregate
- (b) Worker's disability compensation, disability benefit or other similar employee benefit act with minimum statutory limits. Any citing of a policy of insurance must include a listing of the States where that policy's coverage is applicable.

Section 6.2(6) Failure to Maintain Insurance Coverage. Failure to secure and/or maintain insurance coverage shall be deemed a material breach and grounds for termination of this Agreement.—

ARTICLE VII.

RECORD KEEPING, PRIVACY, AND FREEDOM OF INFORMATION ACT

Section 7.1 Providing Information and Reports to Authority. Upon the written request of the Authority, the Contractor will furnish any and all requested information or reports with respect to any and all matters relating to this Agreement and a Program.

Section 7.2 Record Keeping for Auditing and Monitoring of Services. The Contractor will maintain such records as are deemed necessary by the Authority to ensure proper auditing and monitoring of services. These records will be made available for auditing and monitoring purposes to the Authority and the Auditor General of the State of Michigan, or any

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authorized representative, at the site of the services or as otherwise agreed between the parties. The Contractor shall retain and make available to the Authority (and the Auditor General of the State of Michigan, or any authorized representative) the records for three (3) years after the expiration of this Agreement or extension thereof unless permission to destroy them on an earlier date is granted by both the Authority and the State of Michigan.

Section 7.3 Availability of Records to Authority. Upon the written request of the Authority, the Contractor will furnish to the Authority any and all requested information or reports with respect to any and all matters relating to this Agreement.

Section 7.4 Disclosure of Information and Records. Neither the Contractor nor its agents or contractors shall disclose information or documents created or maintained in connection with this Agreement to anyone other than the Contractor's staff assigned to this Agreement or Authority staff, without the direction or prior consent of Authority staff. Neither the Contractor nor its agents or contractors shall use information or documents created or maintained in connection with this agreement to further any private interest, other than as contemplated by this Agreement, without the prior consent of the Authority.

Section 7.5 Privacy and FOIA. The Contractor will maintain all records or information in connection with the occupants of the Units in strict confidence and will ensure that the privacy of the occupants is maintained in accordance with applicable state and federal laws including the state Freedom of Information Act, the federal Freedom of Information Act, and the federal Privacy Act. The Contractor shall not accept on the Authority's behalf subpoenas, requests to produce documents, or requests for documents or information under the state Freedom of Information Act or the federal Freedom of Information Act. The Contractor shall inform persons submitting such subpoenas and requests that the Contractor is not authorized to accept or process such documents on behalf of the State of Michigan or the Authority.

Section 7.6 News Releases. News releases pertaining to this Agreement, the Work Product, or Services will not be made without prior written Authority approval, and then only in accordance with the explicit written instructions from the Authority. No results of the Agreement, Work Product, or Services are to be released without prior approval of the Authority and then only to persons designated.

ARTICLE VIII

ETHICS

Section 8.1 Covenant Not to Discriminate. The Contractor will comply with all requirements imposed by Title VIII of the Federal Civil Rights Act of 1968, as amended, the Elliott-Larsen Michigan Civil Rights Act, the Michigan Handicappers Civil Rights Act, and Title VI of the Federal Civil Rights Act of 1964; the regulations of HUD-issued thereunder, 24 CFR,

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Subtitle A, part 1, Section 1.1 et. Seq.; the requirements of HUD pursuant to the regulations; and Executive order 11063, to the end that, in accordance with the Act the regulations and requirement of HUD thereunder, and the Executive Order, no person will, on the grounds of race, color, creed, religion, handicap, familial status, marital status, or national origin, be excluded from participation in, or be denied the benefits of, the Program or be otherwise subject to discrimination. The Contractor is obligated to comply with this provision to the benefit of the United States, HUD and the Authority, each of which will be entitled to invoke any remedies available by law to redress any breach thereof or to compel compliance therewith by the Contractor.

Section 8.2 Workplace Safety and Discrimination Harassment. In performing services for the Authority pursuant to this Agreement, the Contractor shall comply with Michigan Department of Civil Service Rules 2-20 regarding Workplace Safety and 1-8.3 regarding Discriminatory Harassment. In addition, the Contractor shall comply with Civil Service Regulations governing workplace safety and discriminatory harassment and any applicable state agency rules on these matters that the agency provides to the Contractor. The Michigan Department of Civil Service Rules and Regulations can be found on the Department of Civil Service website at www.state.mi.us/mdcs/Regindx.

Section 8.3 No Gifts. The Contractor has not provided any gifts, payments or other inducements to any officer, employee or agent of the Authority.

Section 8.4 Conflicts of Interest.

(a) **Present and Former Authority Members and Public Officials.** No present or former member or officer of the Authority (except tenant commissioners), no employee of the Authority who formulates policy or influences decisions with respect to the Program, and no public official or member of a governing body or state or local legislator who exercises functions or responsibilities with respect to the Program, during this person's tenure or for one year thereafter, will have any direct or indirect interest in Housing Assistance Contracts or in any proceeds or benefits arising from them, other than those outlined within the Administrative Services Agreement. HUD may waive this provision for good cause under certain circumstances.

(b) **Units Owned, Managed or Listed for Sale by Contractors.** The Contractor will acknowledge that it does not own or have an interest in any Units subject to a Physical Inspection. The Contractor shall further confirm that it does not manage or list for sale any Units subject to a Physical Inspection.

(c) **Participation in Other Authority Programs.** The Contractor will not participate in any other Authority housing program or do business with the Authority under any other

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program in which the Authority has a direct or indirect relationship without first providing written notice to the Authority's Director of the Low Income Housing Tax Credit Program and the Director of Legal Affairs.

(d) **Providing Services for Owner or Management Agents of Developments.** The Contractor shall not provide or perform any services for persons or entities that have an interest in Developments for which the Contractor is performing Physical Inspections without first providing written notice to the Authority's Compliance Manager and the Director of Legal Affairs and receiving permission to perform specific services. Persons or entities with interests in the Development include but are not limited to (a) owners, (b) management agents, or (c) persons or entities that have an interest in the owners or management agents.

Section 8.5 List of Potential Conflicts of Interest. Prior to execution of this Agreement, the Contractor shall provide the Authority a written list of all interests of the Contractor, or its officers and employees, which may create conflicts between the interests of those entities or parties and the interests of the Authority under this Agreement. The Contractor acknowledges that its employees, members, shareholders, agents, or independent contractors prior to or during the term of this Agreement are not employees of the State of Michigan or its units. Should a conflict of interest arise during the term of this Agreement, the Contractor shall contact the Authority's Director of Legal Affairs immediately and describe in detail the conflict of interest.

Section 8.6 Unfair Labor Practices. Pursuant to 1980 Public Act 278, as amended, MCL 423.321, et seq, the Authority shall not award a contract or subcontract to an employer whose name appears in the Register (of employers failing to correct an unfair labor practice compiled pursuant to section 2 of the Act). A contractor of the Authority, in relation to a contract, shall not enter into a contract with a subcontractor, manufacturer, or supplier whose name appears in this Register. Pursuant to section 4 of 1980 Public Act 278, MCL 423.324, the Authority may void any contract, including this Agreement, if, subsequent to award of a contract, the name of the Contractor as an employer, or the name of the subcontractor, manufacturer or supplier of the Contractor appears in the Register

ARTICLE IX.

LEGAL MATTERS

Section 9.1.1 Notice of Convictions and Criminal Investigations. Prior to the execution of this Agreement, the Contractor shall notify the Authority if it, or its officers, directors, or Key Personnel, any of its subcontractors, or their officers, directors, or Key Personnel under this Agreement, have ever been convicted of a felony, or any crime involving

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moral turpitude, including, but not limited to fraud, misappropriation or deception. Contractor shall promptly notify the Authority of any criminal litigation, investigations or proceeding which may have arisen or may arise involving the Contractor or any of the Contractor's subcontractor, or any of the foregoing entities' then current officers or directors during the term of this Agreement and three years thereafter.

Section 9.1.2 Notice of Civil Claims. The Contractor shall notify the Authority of any civil litigation, arbitration, proceeding, or judgments that may have arisen against it or its subcontractors during the five years proceeding its bid proposal, or which may occur during the term of this Agreement or three years thereafter, which involve (1) products or services similar to those provided to the Authority under this Agreement and which either involve a claim in excess of \$50,000 or which otherwise may affect the viability or financial stability of the Contractor, or (2) a claim or written allegation of fraud by the Contractor or any subcontractor hereunder, arising out of their business activities, including this Agreement, or (3) a claim or written allegation that the Contractor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance. Multiple lawsuits and or judgments against the Contractor or subcontractor, in any an amount less than \$50,000 shall be disclosed to the Authority to the extent they affect the financial solvency and integrity of the Contractor or subcontractor.

Section 9.1.3 Notice Requirements for Criminal and Civil Claims. All notices under subsection 1 and 2 herein shall be provided in writing to the Authority within fifteen business days after the Contractor learns about any such criminal or civil investigations and within fifteen days after the commencement of any proceeding, litigation, or arbitration, as otherwise applicable. Details of settlements that are prevented from disclosure by the terms of the settlement shall be annotated as such. Semi-annually, during the term of the Agreement, and thereafter for three years, Contractor shall certify that it is in compliance with this Section. Contractor may rely on similar good faith certifications of its subcontractors, which certifications shall be available for inspection at the option of the Authority.

Section 9.1.4 Assurances. In the event that such investigation, litigation, arbitration or other proceedings disclosed to the Authority pursuant to this Section, or of which the Authority otherwise becomes aware, during the term of this Agreement, causes the Authority to be reasonably concerned about:

- a) the ability of the Contractor or its subcontractor to continue to perform this Agreement in accordance with its terms and conditions, or
- b) whether the Contractor or its subcontractor in performing the Services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of this Agreement or violation of Michigan or Federal law, regulation or public policy, then:

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the Contractor shall be required to provide the Authority all reasonable assurances requested by the Authority to demonstrate that: (a) the Contractor or its subcontractors hereunder will be able to continue to perform this Agreement in accordance with its terms and conditions, (b) the Contractor or its subcontractors will not engage in conduct that is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings while performing Services under this Agreement.

Section 9.1.5 Failure to Comply with Section 9.1. The Contractor's failure to fully and timely comply with the terms of Section 9.1 and subsections thereof, including providing reasonable assurances satisfactory to the Authority, may, at the Authority's sole option, constitute a material breach of this Agreement.

Section 9.2 Arbitration. Notwithstanding anything to the contrary contained herein, upon the demand of either party, any dispute shall be resolved by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Arbitration Rules for Commercial Financial Disputes in effect at the time, including, if applicable, the Supplementary Procedures for Large, Complex Disputes, but excluding the use of the Expedited Procedures (as modified, the "AAA Rules"). Arbitration shall be governed by the Federal Arbitration Act and shall be conducted in the State of Michigan or any other place mutually agreed upon by the parties. Judgment upon any award rendered may be entered in and specifically enforced by any court having jurisdiction. The award of the arbitrators shall specify in writing the factual and legal basis for the award. All awards shall be limited to the parties' actual damages and the arbitrators shall have no authority to award punitive damages. The parties agree to keep all disputes and arbitration proceedings hereunder confidential to the extent permitted by law. If a party fails to answer or otherwise acknowledge a demand to arbitrate a dispute in accordance with the AAA Rules, the arbitrators shall enter an award without a hearing in favor of the party demanding the arbitration. The parties understand and agree that no dispute decided by arbitration may later be pursued before a court except for the purpose of enforcing (i) compliance with this arbitration provision, or (ii) a final decision by the arbitrators.

Section 9.3.1 Ownership and Use of Software. Contractor acknowledges that the software provided by the Authority to conduct the inspections is the property of the Authority. The Contractor agrees not to copy, loan, or sell the software provided by the Authority, make the software available to other persons or entities (other than employees of the Contractor) or use the software for any purposes other than Authority inspections.

Section 9.3.2 Ownership of Data and Records. Any and all Work Products shall be deemed the property of the Authority

ARTICLE X.

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ANNUAL AUDITS

Section 10.1 Performance Review. The Contractor's performance under this Agreement will be reviewed at least annually to ascertain compliance with this Agreement. Authority staff shall conduct the review.

Section 10.2 Unsatisfactory Rating. If the Contractor's performance is deemed unsatisfactory, the Contractor will be notified in writing of the specific deficiencies in performance of this Agreement. If the deficiencies are not corrected to the satisfaction of the Authority within 60 days, the Authority may, in its sole discretion, terminate this Agreement.

ARTICLE XI.

INDEPENDENT CONTRACTOR RELATIONSHIP

Section 11.1 Independence of Contractors. The Authority shall retain the Contractor as an independent contractor, and the Contractor hereby accepts such independent contractor relationship, upon the terms and conditions set forth in this Agreement. Nothing in this Agreement shall be construed to create the relationship of employer and employee between the Authority and the Contractor or any of its employees or agents. The Contractor, its employees and agents, shall be deemed at all times and for all purposes to be independent contractors. The Contractor acknowledges and agrees that all payments by the Authority to the Contractor shall be made without deduction for federal, state or local income taxes, social security taxes and similar items and that the Contractor shall be solely responsible to report income under this Agreement to the Internal Revenue Service and other appropriate taxing authorities and to pay such taxes (including, without limitation, being solely responsible to make periodic estimated payments of such taxes in accordance with applicable law). The Contractor further acknowledges and agrees that all payments under this Agreement to the Contractor by the Authority shall be reported to the IRS and other appropriate taxing authorities as required by law.

ARTICLE XII.

MISCELLANEOUS PROVISIONS:

Section 12.1 Governing Law. This Agreement will be construed in accordance with and governed by the laws of the State of Michigan exclusive of its conflict of laws principles.

Section 12.2 Notice. All notices required by this Agreement concerning the Contractor's termination or resignation, or non-renewal of this Agreement, will be in writing and shall be deemed given (i) when delivered by hand (including courier) or when such delivery is

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refused, (ii) when delivered by registered or certified mail (return receipt requested) or when such delivery is refused, or (iii) when delivered by a nationally recognized overnight delivery service which maintains records of time, place, and recipient of delivery, in each case to the parties at the following addresses or to other addresses as may be furnished in writing by one party to the other in accordance herewith:

Authority: Compliance Manager
Michigan State Housing Development Authority
735 E. Michigan Ave., P. O. Box 30044
Lansing, MI 48909

With a copy
to: Director of Legal Affairs
Michigan State Housing Development Authority
735 E. Michigan Ave., P. O. Box 30044
Lansing, MI 48909

Contractor:

All other notices, consents, or communications required by or concerning this Agreement, exclusive of those concerning the Contractor's termination or resignation, or non-renewal of this Agreement, will be in writing and shall be deemed given when sent via U. S. Mail, Courier, Commercial Delivery Service, Facsimile or Electronic Mail. To the extent that HUD or the Authority requires communication by Electronic Mail, the Contractor will comply with that requirement.

Section 12.3 Partial Invalidity. Whenever possible, each provision of this Agreement shall be interpreted in such a way as to be effective and valid under applicable law. If a provision is prohibited by or invalid under applicable law, it shall be ineffective only to the extent of such provision or invalidity, without invalidating the remainder of such provision or the remaining provisions of this agreement.

Section 12.4 Titles and Headings. Titles and heading to articles, sections, or paragraphs in this agreement are inserted for convenience of reference only and are not intended to affect the interpretation or construction of the agreement.

Section 12.5 Remedies Cumulative. The remedies provided in this agreement shall be cumulative, and the assertion by any party of any right or remedy shall not preclude the assertion by such party of any other rights or the seeking of any other remedies.

Section 12.6 Successors and Assigns; Parties in Interest. This agreement shall be binding on and inure to the benefit of the parties to it and their successors. The obligations,

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interests and responsibilities of the Contractor under this Agreement shall not be assigned without the prior written consent of the Authority.

Section 12.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts shall together constitute but one and the same instrument.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK.]

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Section 12.8 Amendments and Modifications. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES TO IT AND SUPERCEDES ANY PRIOR UNDERSTANDING OR AGREEMENTS WITH RESPECT TO CONTRACTING FOR THE CONTRACTOR'S SERVICES. THIS AGREEMENT MAY BE AMENDED ONLY BY A WRITTEN INSTRUMENT EXECUTED BY ALL PARTIES TO IT.

The parties have executed this Agreement as of the date first above written.

MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY

By: _____
Ted S. Rozeboom

Its: Director of Legal Affairs

_____,
a Michigan Non-Profit Organization

By: _____

Its: Executive Director

Federal Employer Identification Number

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EXHIBIT I

SCOPE OF WORK FOR PERFORMING PHYSICAL INSPECTIONS

1.1 General:

a. At developments designated by the Authority, the Contractor shall perform, in accordance with Authority requirements, a Physical Inspection using the following frequency and inspection standards described below. Developments with multiple sources of funding will default to the most restrictive program requirements, which are set forth below.

Frequency: Physical inspections must be performed every 12 months for the Section 8, Section 236 and bond-financed developments, and every 3 years for the Low Income Housing Tax Credit developments.

Inspection Standards:

- Uniform Physical Condition Standards (UPCS) for LIHTC Units;
- Housing Quality Standards (**HQS**)* for HOME Units;
- MSHDA Inspection Standards Requirements ("UPCS Plus") for Authority-Financed developments.

b. When performing Annual Inspections at Authority-Financed developments, the Contractor shall also review and provide feedback to the Authority on Capital Needs Assessment ("CNA") matters that the Authority has advised the Contractor of prior to the Annual Inspection. The Contractor shall review CNA matters only at Authority-Financed developments.

c. When performing Physical Inspections of buildings and units, the Contractor must review local health, safety, or building code violation reports or notices that have occurred since the last Physical Inspection. The Contractor must review all violations and corrective actions taken and determine whether the buildings and/or units are suitable for occupancy. This information must be documented in the Physical Inspection report.

***Note:** MSHDA has requested a waiver of HUD's requirement to utilize HQS standards for physical inspections of properties with HOME funds. The

Authority has requested HUD's approval to utilize UPCS inspection standards in lieu of HQS for these properties.

1.2 Developments to be Inspected:

a. The Authority will give contractors a list of developments and due dates for performing Physical Inspections. The Authority may designate specific units to inspect.

b. The Contractor shall perform inspections for developments by applying the standards set forth herein and inspecting the following percentages of Units for the Programs described below:

- **Low Income Housing Tax Credit Developments:** 20% of the low-income units in each building of the Development. (The Contractor shall not inspect market rate-units).
- **Bond-Financed Developments:** 20% of the total units (including low income and market rate units)
- **Section 8 Program* and 236 Program Units:** 20% of the total units in the Development, not to exceed 25 units.
- **Developments with Financing from More than One Program:** The greater of:
 - (a) 20% of the low-income units in each building,
 - or
 - (b) 20% of the total units in the development.

***NOTE:** For developments financed through the Section 8 Program, the Contractor shall not inspect more than 25 units unless the development includes LIHTC Units, in which case 20% of the low-income units per building must be inspected.

c. For Low Income Housing Tax Credit units, the Physical Inspection Contractor shall perform a Physical Inspection for 20% of the low-income units in each building and the same units will receive a Tenant File Audit no more than 30 days after the physical inspection is conducted.

d. The Authority reserves the right to require the Contractor to inspect a higher percentage of units, if the Authority deems this necessary and appropriate based on the results of the previous inspection.

1.3 Physical Inspection Standards:

a. The new Physical Inspection standard for **Authority Financed Developments** in 2005 will be "UPCS Plus". The basis for this standard is the Uniform Physical Condition Standard ("UPCS") and also includes additional **Authority** requirements (collectively "UPCS Plus"). UPCS is the standard used by HUD REAC PASS inspectors.

- b. The Contractor shall follow and apply UPCS Plus when conducting Physical Inspections on Authority-Financed developments.
- c. The Contractor shall follow and apply the Uniform Physical Condition Standards for LIHTC Units and HQS Standards* for HOME Units and shall use Authority-Approved Forms when conducting such inspections.
- d. At developments that are assisted only by the Low Income Housing Tax Credit Program, the Contractor shall:
- Use the Uniform Physical Condition Standards for LIHTC Units.
 - Perform Inspections on such developments once every three years, or at the request of the Authority.
 - Review, in person, the Contractor's findings with the development's Management Agent or Owner on site during the Inspection if the development's Management Agent's staff or Owner is available.
 - Perform Re-Inspections on Tax Credit Units only at the request of the Authority.
- e. At developments that are assisted by the HOME Program, the Contractor shall:
- Perform Inspections at such developments annually or as required under HOME regulations.
 - Use Housing Quality Standards (**HQS**)* for HOME units.
 - Review, in person, the Contractor's findings with the development's Management Agent or Owner on site during the Inspection if the development's Management Agent's staff or Owner is available.
 - Perform Re-Inspections on HOME Units only at the request of the Authority.
- f. The Contractor acknowledges that the forms and standards required by the Authority to provide Services are subject to change following written notice by the Authority but shall not result in a material increase in the time necessary to complete the Physical Inspection.

***Note:** MSHDA has requested a waiver of HUD's requirement to utilize HQS standards for physical inspections of properties with HOME funds. The Authority has requested HUD's approval to utilize UPCS inspection standards in lieu of HQS for these properties.

1.4 Scheduling Physical Inspections:

- a. The Contractor will schedule on-site Physical Inspections by providing written notice to the development's Management Agent/Owner as specified

by the Authority at least twenty (20) business days prior to the scheduled inspection date.

b. The Contractor shall provide the Management Agent/Owner with at least 20 business days advance written notice through a scheduling letter.

- The scheduling letter must include the date of the Physical Inspection, the Contractor's anticipated arrival time, and the location of the Physical Inspection.
- The Contractor will address the scheduling letter to the Management Agent of the development. Copies will be sent to the Owner and the Authority's Office of Compliance Monitoring.

c. The Authority shall inform the Contractor of the Asset Manager who is assigned to the Authority-Financed Development that the Contractor will inspect.

1.5 Performing Physical Inspections:

a. The Contractor shall perform Inspections within a timeframe specified by the Authority.

b. The Contractor shall use a form approved by the Authority to perform Physical Inspections or Re-inspections.

c. The Contractor shall inspect any particular unit(s) identified by the Compliance Manager, Compliance Staff, Asset Manager or Physical Portfolio Manager assigned to the development.

d. The Contractor must record the results of the Physical Inspections for each development electronically through the use of the Authority's Multifamily Housing Inspection (MHI) software. Excel, Access or a compatible product should be utilized for tracking Management Agent responses. Microsoft Word or a compatible product should be utilized for correspondence.

e. The Contractor shall forward the results of Physical Inspections to the Authority by (a) uploading the data to the Authority's computers, or (b) delivering a hard copy by facsimile, First Class Mail, overnight mail, or hand delivery only if computer-related or electronic transmission problems prevent the uploading of data to the Authority's computers.

f. The Contractor shall be available to discuss the results of the Physical Inspections with Authority staff, including the Compliance Manager, Compliance Staff, Asset Manager and Physical Portfolio Manager.

g. The Contractor shall be available to Authority staff to discuss the methods and results of the inspections.

h. The Contractor will verbally review, in person, the Physical Inspection findings and results with the development's Management Agent personnel on-site during the Inspection, if Management Agent personnel are available. The Contractor will verbally review the results of the Inspection with the development's Management Agent, or representative, if such representative is available at the conclusion of the Physical Inspection.

i. If life-threatening deficiencies are discovered during the inspection, the Contractor shall issue a hazard notice to the development's Management Agent at conclusion of the inspection. The Contractor must send an electronic copy of the notice to the Authority's Compliance Manager, Asset Manager and Physical Portfolio Manager within 24 hours of the conclusion of the inspection.

1.6 Reviewing/Documenting Local Health, Safety or Building Code Violations:

When performing Physical Inspections of buildings and units, the Contractor must ask the Management Agent/Owner if there have been any local health, safety, or building code violations reports or notices since the last Physical Inspection was conducted by MSHDA or a Contract Physical Inspector of MSHDA. If violations have occurred, the Contractor must review the violations and corrective actions taken and determine whether the buildings and/or units are suitable for occupancy. This information must be documented in the Physical Inspection report.

1.7 Performing CNA Reviews:

a. The review of the CNA and the inspection at the Authority-Financed development of work or items cited in the CNA as requiring repair or replacement shall be described as the "CNA Review."

b. Prior to performing Annual Inspections at Authority-financed developments, the Contractor shall review the Capital Needs Assessment ("CNA") for the development, if a CNA is available for the particular development.

c. The Contractor shall discuss the CNA by telephone or electronic mail with the Asset Manager assigned to the Development.

d. The CNA Review shall be performed once a year for each Authority-Financed development during the Annual Inspection to confirm the status of work or items recommended or cited in the CNA as requiring repair or replacement.

e. The Contractor shall report the status of the work or items recommended in the CNA in the Annual Physical Inspection Report.

1.8 Reports and Letters to Authority and to Development's Management:

- a. Physical Inspection Report and Letter. The Contractor shall provide to the Authority and the development's Management Agent/Owner, by the 20th business day after each inspection is performed, a physical inspection report ("Physical Inspection Report") and cover letter that documents the results of the Physical Inspection. The Physical Inspection Report shall be completed and submitted in a format and manner that is agreed upon by the Authority and Contractor.
- b. Hazard Notice. If life-threatening deficiencies are discovered during the inspection, the Contractor shall issue a hazard notice to the Management Agent/Owner at conclusion of the inspection. The Contractor must send an electronic copy of the notice to the Authority's Compliance Manager, Asset Manager and Physical Portfolio Manager within 24 hours of the conclusion of the inspection.

1.9 Performing Reinspections:

- a. Reinspections shall be performed only at the written request of the Authority at Authority-Financed Developments:
- b. Re-inspections at Authority-financed developments shall:
 - Be performed 6 months after the annual inspection or a shorter time if requested by the Authority.
 - Include a review of all deficiencies noted during the annual inspection to ensure the satisfactory completion of the work, including:
A review of physical problems at particular units identified by the Authority's Compliance Manager, Compliance Staff, Asset Manager or Physical Portfolio Manager at Authority-Financed developments.
 - Include a review of common areas, the grounds, heat, ventilation, air conditioning and cooling.

1.10 Reviewing Management Agent/Owner Response and Follow-up Letter:

- a. When the Management Agent/Owner responds to cited deficiencies and forwards corrective actions taken to the Contractor, the Contractor shall notify the Management Agent/Owner in writing that the corrective action is either acceptable or that outstanding items still exist. A copy of the letter shall be forwarded to MSHDA Compliance Monitoring. If all items have been corrected, no additional follow-up is required. If outstanding items still exist, MSHDA will take appropriate action to resolve the issues.
- b. If the Management Agent/Owner does not respond within the required time period, the Contractor will issue a non-response letter to the Management Agent/Owner (with a copy to MSHDA Compliance Monitoring). When the Management Agent/Owner's response is received, the Contractor will review the response as indicated in item #1 above. If no response is received, the Contractor will send a letter to the Management Agent/Owner

indicating that no response was received and all outstanding issues have been referred to MSHDA for corrective action.

c. The Contractor shall be available to the Authority to discuss responses from Management Agents/Owners.

1.11 Additional Contractor Requirements:

a. Work with the Compliance Monitoring and/or other designated MSHDA staff to ensure uniformity in physical inspection and reporting procedures:

To ensure uniformity in Physical Inspections, all contractors must attend workshops provided by the Authority to discuss inspection procedures.

b. Attend Trainings on UPCS, HQS and MSHDA ("UPCS Plus") Requirements:

- All contractors must attend trainings on UPCS and HQS (if applicable). The Authority is not responsible for the costs of attending these trainings.
- The new Physical Inspection standard for Authority Financed Developments in 2005 will be "UPCS Plus". The basis for this standard is the Uniform Physical Condition Standard (UPCS) and also includes additional MSHDA requirements. UPCS is the standard used by HUD REAC PASS inspectors. Training and proficiency in this standard will be required of all MSHDA Physical Inspection Contractors for 2005.

c. Meet with Authority Staff as Needed to Review Work Progress and Physical Inspection Results:

d. The Contractor shall meet with Authority staff at mutually acceptable times/quarterly to review the Contractor's work. Periodic meetings will be scheduled with all contractors to ensure familiarity with state agency policies and to review work progress and inspection results.